

1 MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744
2 VINEET DUBEY, STATE BAR NO. 243208
3 CUSTODIO & DUBEY LLP
4 445 S. Figueroa St., Suite 2520
5 Los Angeles, CA 90071
6 Telephone: (213) 593-9095
7 Facsimile: (213) 785-2899

8 Attorneys for Plaintiff Ecological Alliance, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 (Unlimited Jurisdiction)

12 ECOLOGICAL ALLIANCE, LLC, a California
13 limited liability company,

14 Plaintiff,

15 v.

16 QUINN FOODS LLC, a Delaware limited
17 liability company; and DOES 1 through 10,
18 inclusive,

19 Defendant.

20 Case No.:

21 **[PROPOSED] STIPULATED**
22 **CONSENT JUDGMENT**

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Quinn Foods LLC
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as
4 follows:

5 WHEREAS: On or about September 23, 2022, Plaintiff, through Plaintiff’s counsel,
6 served a 60 Day Notice to Defendant, Wal-Mart Stores East, L.P., the California Attorney
7 General, the District Attorneys of every County in the State of California, and the City Attorneys
8 for every City in the State of California with a population greater than 750,000 (collectively,
9 “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking Water and
10 Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq., and its
11 implementing regulations (collectively, “Proposition 65”) alleging that and that Plaintiff intended
12 to file an enforcement action in the public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Quinn
14 peanut butter filled pretzel nuggets containing Lead, (collectively the “Covered Products”) that
15 were sold or distributed for sale in California and further alleges that those Covered Products
16 expose consumers in the State of California to chemicals including Lead, which are listed by the
17 State of California pursuant to California Health and Safety Code § 25249.8; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
19 to Lead in Covered Products without being provided the Proposition 65 warning set out at
20 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65
21 Warning”);

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
23 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

24 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
25 believes that this objective is achieved by the actions described in this Consent Judgment; and

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
27 and expense of litigation.
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2 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
3 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:
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5 INTRODUCTION

6 1.1. On or about September 23, 2022 Plaintiff served a 60-Day Notice upon Defendant,
7 Wal-Mart Stores East, L.P., and on Public Prosecutors. No Public Prosecutors
8 commenced an enforcement action. No Public Prosecutor having commenced an
9 enforcement action, Plaintiff proceeded to file its Complaint against Defendant in the
10 present action.

11 1.2. For purposes of this Consent Judgment, the Parties agree that Defendant is a
12 business entity that has employed ten or more persons at all times relevant to this action,
13 and qualifies as a "person in the course of doing business" within the meaning of
14 Proposition 65.

15 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
16 "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation
17 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
18 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
19 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
20 claims which were or could have been raised in the Complaint based on the facts alleged
21 therein with respect to the Covered Products, and of all claims which were or could have
22 been raised by any person or entity based in whole or in part, directly or indirectly, on the
23 facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related
24 thereto, with respect to Covered Products, including any Proposition 65 claim arising out
25 of an exposure to Covered Products (collectively, "Proposition 65 Claims").

26 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
27 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
28 resolving the issues raised therein both as to past and future conduct. By execution of
this Consent Judgment and agreeing to comply with its terms, the Parties do not admit

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2 any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with
3 the Consent Judgment constitute or be construed as an admission by Defendant of any
4 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
5 legal allegations in the 60-Day Notices and the Complaint and expressly denies any
6 wrongdoing whatsoever.

7 2. DEFINITIONS

8 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the
9 Consent Judgment has been approved and entered by the Court with signature.

10 "Compliance Date" shall mean, with respect to this Consent Judgment, one-hundred and
11 twenty (120) days after the Effective Date.

12 2.2. "Covered Products" shall mean, with respect to this Consent Judgment, Quinn pretzel
13 nuggets that are manufactured, distributed, sold and/or offered for sale by Defendant in
14 California.

15 3. INJUNCTIVE RELIEF

16 3.1. For each Covered Product, Defendant agrees to undertake, or cause to be
17 undertaken on its behalf, either: (a) reformulation of the Covered Product to bring it
18 within the Proposition exemption identified in Section 3.2 below or (b) to provide a
19 warning as prescribed in Sections 3.3.-3.4 below. Compliance with this Section 3.1 will
20 constitute compliance by Defendant with all requirements of Proposition 65 relating to
21 Lead exposure in the Covered Products.

22 3.2. Proposition 65 Exemption for the Covered Products

23 Covered Products shall be deemed to comply with Proposition 65, and be exempt from
24 any Proposition 65 warning requirements with respect to Lead, if the Covered Product
25 contains no more than 0.5 micrograms of lead per serving, with serving size measured by
26 the serving size specified on the label for the Covered Product.

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2 3.3. Warning Option

3 Covered Products that do not meet the warning exemption set forth in Section 3.2, shall be
4 accompanied by a warning as described in Section 3.4 below. This warning requirement
5 shall only be required as to Covered Products that are shipped for sale into California by
6 Defendant, after the Compliance Date. No Proposition 65 warning shall be required as to
7 any Covered Products that are already in the stream of commerce as of the Compliance
8 Date.

9 3.4. Warning Language

10 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
11 the following warning statements ("Warning"), displayed in a reasonably conspicuous
12 manner:

13 Option (1)

14 **WARNING:** Consuming this product can expose you to chemicals
15 including Lead, which [is] are known to the State of California to cause
16 [cancer and] birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov/food

17 Option (2)

18 **WARNING:** [Cancer and] Reproductive Harm—
www.P65Warnings.ca.gov/food

19 Defendant shall use the phrase "cancer and" in the Warning if it has reason to believe that the
20 daily Lead exposure is greater than 15 micrograms of lead or if Defendant has reason to
21 believe that another Proposition 65 chemical is present which may require a cancer warning.
22 The Warning shall be provided through one of the following methods: (1) a product-specific
23 warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each
24 point of display of the product; or (2) a product-specific warning provided via any electronic
25 device or process that automatically provides the warning to the purchaser prior to or during
26 the purchase of the consumer product, without requiring the purchaser to seek out the
27 warning; or (3) a warning on the label that is securely affixed to or printed upon the label and
28 complies with this Section 3.4. In addition, for any Covered Product sold over the internet by

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2 Defendant, the Warning shall appear prior to checkout on the primary product page, or as
3 a pop-up when a California address is input into the shipping instructions, or on the checkout
4 page when a California delivery address is indicated for any purchase of any Covered
5 Product. The Warning may be provided with a conspicuous hyperlink stating "WARNING"
6 in all capital and bold letters so long as the hyperlink goes directly to a page prominently
7 displaying the Warning without content that detracts from the Warning. Given Defendant's
8 lack of control over third-party websites, the online warning requirements expressed in this
9 Section apply only to Covered Products sold through Defendant's website. However,
10 Defendant will provide notice to any third-party website sellers to provide Warnings with sale
11 of the Covered Product. If subsequently enacted changes to Proposition 65 or its
12 implementing regulations require the use of additional or different information on any
13 warning specifically applicable to the Covered Products (the "New Safe Harbor Warning"),
14 the Parties agree that the New Safe Harbor warning may be utilized in place of or in addition
15 to, as applicable, the warnings set forth in this Section.

16 4. MONETARY RELIEF

17 4.1. Within ten (10) business days of the receiving notice that this Consent Judgment
18 has been approved of and entered by the Court, and after receiving taxpayer information
19 from Plaintiff, Defendant shall pay the total sum of \$36,000 which includes \$10,000 in
20 civil penalties and \$26,000 in payment of Plaintiff's costs and reasonable attorney's fees.
21 The \$10,000 civil penalty shall be apportioned pursuant to Health and Safety Code
22 section 25249.12 (d), with 75%, or \$8,000, paid to the State of California's Office of
23 Environmental Health Hazard Assessment and 25%, or \$2,000, payable to Plaintiff.

24 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
25 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
26 portions due to the State of California Office of Environmental Health Hazard
27 Assessment and to Plaintiff.

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2 Bank: Bank of America, N.A.

3 Routing Transit No.: 026009593

4 Account No.: 325149324377

5 Beneficiary: Custodio & Dubey LLP

6 **5. CLAIMS COVERED AND RELEASE**

7 5.1. This Consent Judgment is a full, final and binding resolution between Ecological
8 Alliance on behalf of itself and in the public interest, and Defendant Quimn Foods LLC
9 and its respective officers, directors, members, shareholders, employees, attorneys,
10 agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees,
11 licensees, and retailers (including Wal-Mart Stores East, L.P.), their parent and all
12 subsidiaries and affiliates thereof, their respective employees, agents and assigns, as well
13 as all other upstream and downstream entities in the distribution chain for any of the
14 Covered Products, and the predecessors, successors, and assigns of any of them
15 (collectively, the "Released Parties").

16 5.2. Plaintiff acting on its own behalf and in the public interest releases the Released Parties
17 from all claims, actions, causes of actions, suits, demand, liability, damages, penalties,
18 fees, costs, and expenses asserted or which could have been asserted from the handling or
19 consumption of the Covered Products, as to any alleged violations of Proposition 65 or its
20 implementing regulations up through the Compliance Date based on exposure to Lead
21 from the Covered Products as set forth in the Notices of Violation, the Complaint and
22 herein. Compliance with the terms of this Consent Judgment constitutes compliance with
23 Proposition 65 with respect to exposures to Lead from the Covered Products. This
24 release does not apply to unauthorized third-party websites that do not provide the
25 required Warnings.

26 5.3. It is possible that other claims not known to the Parties arising out of the facts
27 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
28 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on

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2 the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment
3 is expressly intended to cover and include all such claims through and including the
4 Effective Date, including all rights of action thereon. Plaintiff and Defendant
5 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
6 claims, and nevertheless intend to release such claims, and in doing so waive California
7 Civil Code § 1542 which reads as follows:

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9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
10 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
11 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
12 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
13 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

14 5.4. Plaintiff understands and acknowledges that the significance and consequence of
15 *this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages*
16 *arising out of or resulting from, or related directly or indirectly to, in whole or in part, the*
17 *Covered Products, including but not limited to any exposure to, or failure to warn with*
18 *respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim*
19 *for those damages against any of the Released Parties.*

20 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute
21 compliance with Proposition 65 with respect to exposure to Lead in the Covered Products
22 as set forth in the 60 Day Notices and/or the Complaint.

23 **6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

24 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
25 referenced in California Health and Safety Code § 25249.7(f).

26 **7. PROVISION OF NOTICE**

27 7.1. When any Party is entitled to receive any notice or writing under this Consent
28 Judgment, the notice or writing shall be sent by first class certified mail with return
receipt requested, or by electronic mail, as follows:

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To Defendant:
Abhishek K. Gurnani
Amin Talati Wasserman LLP
549 W. Randolph Street, Suite 400
Chicago, IL 60661
abhishek@amintalati.com

To Plaintiff:
Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Ste 2520
Los Angeles, CA 90071
dubey@cd-lawyers.com

7.2. Any party may modify the person and address to whom the notice is to be sent by sending the other Party notice that is transmitted in the manner set forth in section 7.1.

8. COURT APPROVAL

8.1. Upon execution of this Consent Judgment by all Parties, Plaintiff shall prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall support. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8.2. This Consent Judgment may apply to and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to any Covered Products that are distributed or sold exclusively outside the State of California and that is not intended for use by California consumers.

9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. ENTIRE AGREEMENT

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2 10.1. This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are
5 hereby merged herein and therein.

6 10.2. There are no warranties, representations, or other agreements between the Parties
7 except as expressly set forth herein. No representations, oral or otherwise, express or
8 implied, other than those specifically referred to in this Consent Judgment have been
9 made by any Party hereto.

10 10.3. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or
13 to bind any of the Parties hereto only to the extent that they are expressly incorporated
14 herein.

15 10.4. No supplementation, modification, waiver, or termination of this Consent
16 Judgment shall be binding unless executed in writing by the Party to be bound thereby,
17 and approved and ordered by the Court.

18 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
19 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
20 shall such waiver constitute a continuing waiver.

21 **11. RETENTION OF JURISDICTION & ENFORCEMENT**

22 11.1. This Court shall retain jurisdiction of this matter to implement, enforce or modify
23 the Consent Judgment. Any alleged breach of the terms of this Consent Judgment must
24 be brought in this Court.

25 11.2. If Plaintiff alleges that any Covered Products fail to comply with this Consent
26 Judgment, then Plaintiff shall inform Defendant in a reasonably prompt manner of its test
27 results and related packaging information, including information sufficient to permit
28 Defendant to identify the Covered Products at issue. The Parties shall first attempt to

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resolve the matter prior to Plaintiff taking any further legal action.

11.3. In the event that Proposition 65 is repealed or preempted as to food products, or if lead is deemed to be naturally occurring in the Covered Products and not requiring a warning through a law or regulation, then Plaintiff shall have no further obligation pursuant to this Consent Judgment with respect to, and to the extent that the Covered Products are so affected.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

13. EXECUTION IN COUNTERPARTS

13.1. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute the same document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the original.

14. AUTHORIZATION

14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

15. SEVERABILITY

15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect.

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AGREED TO:

Ecological Alliance LLC

Date: March 20, 2023

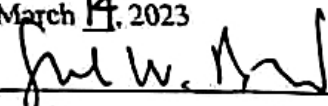
By: 

Harmony Welsh, Managing Member

AGREED TO:

Quinn Foods LLC

Date: March 14, 2023

By: 

SARAH W. BIRD, CEO

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT